



**Order under Section 69
Residential Tenancies Act, 2006**

Citation: Victoria Park Management v Pingay, 2023 ONLTB 15566

Date: 2023-01-23

File Number: LTB-L-013722-22

In the matter of: 45, 2344 BARTON ST E
HAMILTON ON L8E3G6

Between: Victoria Park Management Landlord

And

Christopher Pingay Tenants
Vinnie Noriega

Victoria Park Management (the 'Landlord') applied for an order to terminate the tenancy and evict Christopher Pingay and Vinnie Noriega (the 'Tenants') because:

- the Tenants have been persistently late in paying the Tenants' rent.

The Landlord also claimed compensation for each day the Tenant remained in the unit after the termination date.

This application was heard by videoconference on January 12, 2023.

Only the Landlord's Legal Representative Karolina Aguiar attended the hearing.

As of 9:43 a.m., the Tenants were not present or represented at the hearing although properly served with notice of this hearing by the LTB. There was no record of a request to adjourn the hearing. Since the Tenants did not attend and the Landlord was prepared to proceed, the matter proceeded by way of an uncontested hearing pursuant to section 7 of the *Statutory Powers Procedure Act*, R.S.O. 1990.

Determinations:

1. The Landlord applied for an order to terminate the tenancy and evict the Tenants because the Tenants persistently failed to pay rent when it was due.

2. At the hearing the Landlord's Legal Representative relied on oral submissions and referred to documents to support their application.
3. The Tenants are to pay rent to the Landlord on the first of the month and the tenancy is month to month.

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4. The Landlord's evidence was the Tenants have persistently failed to pay the lawful rent on the date it was due. At the time of service of the N8 notice, the rent has been paid late six of the previous six months.
5. Section 58 of the *Residential Tenancies Act, 2006*, (the 'Act') sets out that a landlord may give a tenant notice of termination of their tenancy if the tenant has persistently failed to pay rent on the date it becomes due and payable (N8 notice). The Landlord served the Tenants with an N8 notice on March 7, 2022 with a termination date of May 31, 2022.
6. I accept the uncontested evidence of the Landlord and am satisfied, on a balance of probabilities, that the Tenants have persistently failed to pay the rent on the date it was due.
7. At the hearing the Landlord no longer sought eviction as the Tenants have made efforts to pay their rent on time since July 2022. The Landlord requested a conditional order requiring the Tenants to pay their rent on time for a period of 12 months.
8. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
9. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the Residential Tenancies Act, 2006 (the 'Act'), and find that it would not be unfair to grant relief from eviction subject to the conditions set out in this order pursuant to subsection 83(1)(a) and 204(1) of the Act. The Landlord's uncontested evidence established that the Tenants persistently paid late however, the Tenants have begun to pay rent on time. I find that a pay-on-time order, as requested by the Landlord, is appropriate in these circumstances. As termination is a remedy of last resort, I find the Tenants should be given another opportunity with a pay-on-time order.

It is ordered that:

1. The tenancy between the Landlord and the Tenants continues if the Tenants meet the conditions set out in paragraph 2 below.

2. The Tenant shall pay to the Landlord the full rent owing on or before the first day of each month, commencing February 1, 2023 and for 12 months thereafter up to and including January 1, 2024.
3. If the Tenants fail to comply with the conditions set out in paragraph 2 of this order, the Landlord may apply under section 78 of the *Residential Tenancies Act, 2006* (the 'Act') for an order terminating the tenancy and evicting the Tenant. The Landlord must make the application within 30 days of a breach of a condition. This application is made to the LTB without notice to the Tenant.
4. The Tenants shall pay to the Landlord \$186.00 for the cost of filing the application.
5. If the Tenants does not pay the Landlord the full amount owing on or before February 3, 2023, the Tenant will start to owe interest. This will be simple interest calculated from February 4, 2023 at 5.00% annually on the balance outstanding.

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January 23, 2023
Date Issued

John Cashmore
Member, Landlord and Tenant Board

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Toronto ON M7A 2G6

If you have any questions about this order, call 416-645-8080 or toll free at 1-888-332-3234.

